

A decorative graphic consisting of a thin yellow circle on the left side, a thick yellow bracket on the right side, and a horizontal yellow bar across the middle. The text "Changes to Medigap and Medicare Marketing" is centered within the yellow bar.

# Changes to Medigap and Medicare Marketing

States Need to Adopt the  
Amended NAIC Medicare  
Supplement Model before July 1,  
2009 / September 24, 2009

# Overview

- 1. Medigap – Review changes approved by NAIC in March 2007.
- 2. Medigap – Changes made by Genetic Information Nondiscrimination Act (GINA).
- 3. Medigap – Authorization and changes made by Medicare Improvements for Patients and Providers Act (MIPPA).
- 4. Medicare Marketing – Changes made (and not made) by MIPPA.

# Medigap – Key Dates

- **March 11, 2007** = NAIC Plenary approved Medigap modernization changes -- pending Congressional authority. States are asked not to adopt new changes until Congressional action taken.
- **September 24, 2008** = NAIC adopted changes to Medigap model, to conform with GINA and MIPPA.
- **May 21, 2009** = Effective date for GINA requirements.
- **July 1, 2009** = GINA deadline for state adoption of requirements.
- **Sept. 24, 2009** = Deadline for states to adopt all NAIC Medigap model changes as required/authorized by MIPPA (including the March 2007 revisions).
- **June 1, 2010** = Effective date for modernized Medigap plans/benefits to be sold.

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1. Medigap – Review changes approved by NAIC in March 2007

# March 2007 Medigap Modernization Changes

- In response to Congressional report language included in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), the NAIC Senior Issues Task Force assembled a Subgroup to work on the modernization of Medigap plans and benefits.
- The Subgroup was comprised of state regulators, CMS representatives, consumer advocates, industry representatives, and other interested parties.
- The Subgroup developed a modernization proposal, contained in revisions to the NAIC Medigap model regulation.

# March 2007 Medigap Modernization Changes

- Summary of changes approved by NAIC in March 2007:
  - Overall = Reduces number of plans from 14 to 11.
  - Eliminates Plans H, I, and J. (Became duplicative, after MMA.)
  - Eliminates Plan E. (Became duplicative, after other changes made.)
  - Creates new plans M and N. (New options with higher beneficiary cost-sharing and lower anticipated premiums.)
  - Eliminates outdated “At-Home Recovery” benefit.
  - Creates a new “Hospice” benefit, which is added to every plan as part of Basic (Core) benefits.
  - Eliminates outdated and underutilized “Preventative Care” benefit.
  - Replaces the 80% Part B Excess Charges Benefit with 100% benefit.

# March 2007 Medigap Modernization Changes

- Existing policyholders may keep their old policies.
- The model includes transition standards to permit companies to offer existing policyholders the opportunity to leave their old policy and purchase a new policy, if they choose.

# March 2007 Medigap Modernization Changes

- On March 11, 2007, the NAIC Plenary approved these revisions to the NAIC Medigap model regulation. However, states and CMS were unable to proceed with these changes until Congressional authorization was approved. States were asked not to adopt these new changes until Congressional action was taken.


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- 2. Medigap – Changes made by Genetic Information Nondiscrimination Act (GINA).

# GINA Requirements

- The Genetic Information Nondiscrimination Act of 2008 (GINA) was enacted on May 21, 2008 and prohibits the denial, conditioning, or discrimination in the pricing of a Medicare supplement policy on the basis of genetic information.
- GINA also limits the ability of Medicare supplement issuers from requesting or requiring genetic testing, and prohibits the collection of genetic information for underwriting purposes or other purposes prior to enrollment.

# GINA Requirements

- GINA provides the NAIC with the opportunity to make conforming model law changes by October 31, 2008.
- If the NAIC does not make the necessary changes by that date, the Secretary of HHS is required to make modifications to federal rules, which would then be considered the governing regulation.
- The effective date for GINA requirements is May 21, 2009 (one year from the date of enactment). However, GINA gives states until **July 1, 2009** to make regulatory or statutory changes.

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3. Medigap – Authorization and changes made by Medicare Improvements for Patients and Providers Act (MIPPA).

# MIPPA Requirements

- The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) was enacted on July 15, 2008.

# MIPPA Requirements

- MIPPA authorizes the revisions to Medigap plans and benefits contained in the model law revisions approved by NAIC in March 2007.
- However, MIPPA also imposed new requirement:
  - Requires that any carrier that chooses to offer a Medigap policy other than Plan A, must also offer either Plan C or Plan F.

# MIPPA Requirements

- MIPPA requires that the NAIC make conforming changes to the Medigap model regulation, as well as the changes required by GINA, by **October 31, 2008**.
- (Likely date of NAIC adoption = 9/24/08.)
- States then have 1 year to adopt (9/24/09).
- New plans would be sold effective June 1, 2010.

# MIPPA Requirements

- MIPPA also clarifies that plans attempting to supplement Medicare Advantage must comply with existing Medigap requirements.

# March 2007 changes, GINA, and MIPPA

- On September 24, 2008, the NAIC Plenary adopted the Medigap model regulation approved in March 2007, with revisions to conform with both GINA and MIPPA.

# March 2007 changes and MIPPA

- As a result of the March 2007 Medigap modernization revisions and the requirements of MIPPA, states will have to consider:
  - Effective dates and timelines;
  - Promulgation of new state regulations;
  - Whether changes need approval of state legislature (including timing of legislative sessions);
  - Review and approval of new form filings by Medigap carriers prior to June 1, 2010 effective date;
  - Review and approval of new Medigap marketing materials and consumer materials.

# March 2007 Changes and MIPPA

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- 4. Medicare Marketing – Changes made (and not made) by MIPPA.

# Medicare Marketing Provisions in MIPPA

- MIPPA contains a number of provisions to address marketing and sales of Medicare private plans (MA and prescription drug plans).
- Many of these provisions codify requirements already existing in CMS guidance, or were contained in an NPRM earlier this year.

# Medicare Marketing Provisions in MIPPA

- MIPPA does not include any significant expansion of state authority or oversight.
- MIPPA retains the current bifurcated regulatory system, with no state authority over these plans except for licensing and solvency.

# Medicare Marketing Provisions in MIPPA

- Codifies the already existing CMS requirement that plans must use only state-licensed agents.
- Requires that plans abide by state agent appointment laws.
- Requires plans to comply with state requests for information about the performance of a licensed producer as part of a state investigation into the conduct of that producer.

# Medicare Marketing Provisions in MIPPA

- Specifically prohibits a number of activities already contained in the NAIC Medicare Private Plans whitepaper as recommendations, the CMS Marketing Guidelines and the recent CMS NPRM of Medicare Advantage marketing standards
- The prohibitions and limitations apply both to Medicare Advantage Plans and Prescription Drug Plans.

# Medicare Marketing

- NAIC White Paper.
- Continued Congressional and public interest in CMS oversight of Medicare private plans.
- Continued exchange of information between states and CMS under the terms of an MOU. All states have now signed an MOU with CMS.

# [ Conclusion ]

- Failure to adopt the changes to the NAIC Medicare supplement model ( No. 651) in the time frames contained in the federal law could result in a state being preempted from regulating Medicare supplement business
- In addition to this presentation, we have prepared an implementation book that contains FAQ's, an implementation time line and sources for your staff to go to with questions
- Medicare Advantage regulatory issues will continue to be followed by the Senior Issues Task Force because Congress will continue to look at the programs and will expect our participation

# [ Conclusion ]

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- Questions???